
FROM DOMICILE TO DOMINION: INDIA'S SETTLER COLONIAL AGENDA IN KASHMIR

On August 5, 2019, the Indian government revoked the autonomous status of Jammu and Kashmir¹ by abrogating Articles 370 and 35A of the Indian Constitution.² Although many saw Article 370 as largely symbolic, Article 35A of the Constitution had a practical function for preserving Kashmiri identity. Article 35A vested Kashmir's legislative assembly with the sole authority to define "permanent residents." Significantly, the local government was able to affix special privileges — such as the ability to purchase land — to permanent residents. The effect was that only Kashmiris could own property in a region that India has long claimed as its own. In revoking Article 35A, the Indian government unearthed a fear that Kashmiris had been wrestling with since Independence: that India would recruit non-Kashmiri settlers to dilute the region's ethnic and religious makeup.

August 5, then, marked a critical turning point in the Kashmir dispute. Although the colonial lens has been applied to Kashmir in the past, the abrogation suggests that the *settler* colonial lens may be more fitting. Settler colonialism is premised on the recruitment of a settler class whose goal is not only to occupy indigenous land but also to eliminate the indigenes who stand in their way. Thus, as non-Kashmiris flood the region as new residents, India's identity as a settler state comes to the fore.

The law often plays a crucial role in facilitating the erasure and elimination of indigenous communities in settler colonial projects. Exploring features of the post-Partition legal regime — especially military impunity, arbitrary detention, and displacement — reveals how the settler colonial mindset animated India's relationship with Kashmir long before the events of August 5th.

This Note uses settler colonial theory to explain how the August 5 abrogation came about. It begins by laying out a theoretical framework for understanding settler colonialism. Next, it contextualizes and documents the legally momentous events of August 5, 2019, highlighting both the thwarted promises of Kashmiri autonomy and the growing settler colonial desire to control Kashmir and its land. It concludes by analyzing the legal regime that facilitated the full emergence of the settler project today. While August 5 may have been the tipping point for the settler colonial project in Kashmir, it was in no way the start.

¹ Hereinafter also referred to as "Kashmir." "Kashmir" refers to the India-occupied region of Jammu and Kashmir, which largely consists of the Kashmir Valley, Jammu, and Ladakh. See JOSEF KORBEL, DANGER IN KASHMIR 5–6 (rev. ed. 2015).

² *India Revokes Kashmir's Special Status*, AL JAZEERA (Sept. 4, 2019), <https://www.aljazeera.com/news/2019/09/india-revokes-kashmir-special-status-190904143838166.html> [https://perma.cc/AZ3C-GG37].

I. SETTLER COLONIALISM AS A LENS

For some, August 5 will join the unfortunate list of days of colonial and “post-colonial” violence: Australia Day, Waitangi Day, Yawm an-Nakba, and Columbus Day.³ Scholars and commentators fear that abrogation of Articles 370 and 35A will precipitate India’s “settler colonial project” in Kashmir: India can now recruit non-Kashmiris to dilute the region’s predominantly Muslim population.⁴

Settler colonial studies is a relatively new field of interest in post-colonial literature. Traditionally a school of anthropological and political thought, settler colonialism has often been applied to dissect the struggles of indigenous communities in the United States, New Zealand, and Australia.⁵ Scholars have also extended the framework to explain the twentieth-century settler projects waged against Palestinians.⁶

Colonialism and settler colonialism are distinct, yet intertwined, modes of oppression. While both entail migration and a relationship of ascendancy, their ultimate desires are fundamentally different.⁷ Colonizers say, “[Y]ou, work for me,” settler colonizers say, “[Y]ou, go away.”⁸

Classic colonialism is “a system of domination” facilitated by territorial acquisition.⁹ The colonizers, in dominating an indigenous majority, act to fulfill the interests of their distant metropolis.¹⁰ Their goal is not to stay in their newly sought territory, but rather to exploit profits to “sustain the permanent subordination of the colonised.”¹¹

The primary objective of settler colonialism, by contrast, is to permanently occupy the colonized territory: settler states recruit settler classes that “bring with them a purported sovereign prerogative to establish a new state on someone else’s land.”¹² To sustain their dominion, settler

³ See Azeezah Kanji, *A How-To Guide for the Settler Colonial Present: From Canada to Palestine to Kashmir*, YELLOWHEAD INST. (Aug. 5, 2020), <https://yellowheadinstitute.org/2020/08/05/markings-the-settler-colonial-present-from-canada-to-palestine-to-kashmir> [https://perma.cc/MR3Z-Z54V].

⁴ See, e.g., Hafsa Kanjwal, Opinion, *India’s Settler-Colonial Project in Kashmir Takes a Disturbing Turn*, WASH. POST (Aug. 5, 2019, 6:59 PM), <https://www.washingtonpost.com/opinions/2019/08/05/indias-settler-colonial-project-kashmir-takes-disturbing-turn> [https://perma.cc/4WCQ-BMN9].

⁵ See generally A. GRENFELL PRICE, *WHITE SETTLERS AND NATIVE PEOPLES* (1950) (comparing the effects of white settler colonialism on indigenous populations of North America, New Zealand, and Australia).

⁶ See generally, e.g., MAXIME RODINSON, *ISRAEL: A COLONIAL-SETTLER STATE?* (1973); Nadim N. Rouhana & Areej Sabbagh-Khoury, *Settler-Colonial Citizenship: Conceptualizing the Relationship Between Israel and Its Palestinian Citizens*, 5 SETTLER COLONIAL STUD. 205 (2015).

⁷ Lorenzo Veracini, *Introducing Settler Colonial Studies*, 1 SETTLER COLONIAL STUD. 1, 1 (2011).

⁸ *Id.*

⁹ See NATSU TAYLOR SAITO, *SETTLER COLONIALISM, RACE, AND THE LAW* 43 (Ediberto Roman ed., 2020) (emphasis omitted) (quoting JÜRGEN OSTERHAMMEL, *COLONIALISM* 4 (Shelley L. Frisch trans., Markus Wiener Publishers 2d ed. 2005) (1995)).

¹⁰ *Id.* at 45–47.

¹¹ Veracini, *supra* note 7, at 2.

¹² SAITO, *supra* note 9, at 51.

states — with the help of a local administration¹³ — will spin narratives of a unique cultural identity, create independent structures of law and order, and rely on both military and economic power.¹⁴ Law, in particular, often cements and expands a settler colonial project.¹⁵ The law not only establishes and reestablishes the allocation of land and resources but also controls the distribution of violence in a settler regime.¹⁶

In settler colonialism, territory is fetishized.¹⁷ Land is the object of desire; the place where settlers can imagine a society of their choosing on land perceived as their own.¹⁸ In the heat of this desire, settlers rationalize the elimination of the indigenous who complicate the realization of their imagined polity.¹⁹ It is the synchronization of these forces that gives the project its distinctive feature: replacement.²⁰

To replace is to eliminate the indigenous population. This replacement is driven by the “logic of elimination.” The “logic of elimination,” famously coined by Professor Patrick Wolfe,²¹ does not necessarily entail violence. To eliminate the indigenous equally includes displacement, forced assimilation, and the induced disappearance of indigenous heritage and institutions.²² Whereas classic colonialism is marked by a vicious cycle where the freedom of the colonized is perpetually postponed, true settler colonialism will “extinguish[] itself,” so there is no indigenous community to stand in distinction from the realized settler one.²³ The indigenous identity, unlike the colonized one, is entirely dispensable.²⁴

II. THE DENIAL OF AUTONOMY

To understand the nature of the abrogation, one first needs to understand the autonomy promised to Kashmiris in the aftermath of the Partition of British India. This Part details that history, noting not only

¹³ A local administration is “charged with maintaining order and authority” on behalf of the settler state. Caroline Elkins & Susan Pedersen, *Settler Colonialism: A Concept and Its Uses*, in *SETTLER COLONIALISM IN THE TWENTIETH CENTURY* 1, 4 (Caroline Elkins & Susan Pedersen eds., 2005).

¹⁴ See SAITO, *supra* note 9, at 52.

¹⁵ See David Lloyd & Patrick Wolfe, *Settler Colonial Logics and the Neoliberal Regime*, 6 *SETTLER COLONIAL STUD.* 109, 114 (2016).

¹⁶ See *id.*

¹⁷ See Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 *J. GENOCIDE RSCH.* 387, 388 (2006).

¹⁸ See *id.*

¹⁹ See SAITO, *supra* note 9, at 51.

²⁰ See Wolfe, *supra* note 17, at 388.

²¹ Patrick Wolfe, *Nation and Miscegenation: Discursive Continuity in the Post-Mabo Era*, 36 *SOC. ANALYSIS* 93, 93 (1994).

²² See Wolfe, *supra* note 17, at 388.

²³ See Lorenzo Veracini, Essay, *The Other Shift: Settler Colonialism, Israel, and the Occupation*, 42 *J. PALESTINE STUD.* 26, 28 (2013) (emphasis omitted).

²⁴ See Veracini, *supra* note 7, at 3.

how Article 370 came to be but also how it was subsequently whittled to a legal fiction. It shows that Kashmir's autonomy was hollowed by no small coincidence — a growing settler desire for Kashmir and its sacralized land facilitated the modern settler colonial project in the region.

A. *The Making of Article 370*

The recent changes to Kashmir's legal framework trace back to the region's contested story in the Partition of British India.²⁵ In August 1947, Jammu and Kashmir was one of the largest "princely states" in the Indian subcontinent.²⁶ The region was culturally and topographically heterogeneous, and uniquely abutted both Indian and Pakistani frontiers.²⁷ It included what is now the largely Hindu, low-hilled region of Jammu; the majority-Muslim valley of Kashmir; and the Buddhist and Shia Muslim, high-peaked Ladakh.²⁸ Notably, the princely state, although predominantly Muslim, was ruled by a Hindu king, Maharaja Hari Singh.²⁹

How would Kashmir's future manifest in a free Indian subcontinent? For other princely states, the question reduced to one of religion: majority-Muslim states would follow Pakistan and the rest, India.³⁰ However, given its geographic and demographic complexities, Jammu and Kashmir did not fit neatly into this binary.³¹ Both the Maharaja's own preference for an independent Kashmir³² and a growing movement of Kashmiris revolting against the Maharaja³³ only complicated this arithmetic further.

Thus, when confronted with the question of accession, the Maharaja opted instead for "standstill agreements" that left Kashmir's sovereignty intact.³⁴ But such agreements did not last very long. In what is a largely contested history,³⁵ the arrival of armed groups from Pakistan forced

²⁵ "From [the Maharaja's decision to accede] all else has flowed; and its consequences are with us still." ALASTAIR LAMB, *KASHMIR: A DISPUTED LEGACY*, 1846–1990, at 2 (1991).

²⁶ The princely system relied on nested sovereignty, where princes exercised near-autonomy while still heeding the title of the British monarchy. RAMACHANDRA GUHA, *INDIA AFTER GANDHI* 36–37 (2008).

²⁷ See *id.* at 59.

²⁸ See Mona Bhan et al., "*Rebels of the Streets*": Violence, Protest, and Freedom in Kashmir, in *RESISTING OCCUPATION IN KASHMIR* 1, 5 (Haley Duschinski et al. eds., 2019).

²⁹ GUHA, *supra* note 26, at 60.

³⁰ See NEERA CHANDHOKE, *CONTESTED SECESSIONS: RIGHTS, SELF-DETERMINATION, DEMOCRACY, AND KASHMIR* 19 (2012).

³¹ See Matthew J. Webb, *Escaping History or Merely Rewriting It? The Significance of Kashmir's Accession to Its Political Future*, 20 *CONTEMP. S. ASIA* 471, 477 (2012).

³² See GUHA, *supra* note 26, at 64.

³³ See generally MRIDU RAI, *HINDU RULERS, MUSLIM SUBJECTS* 224–87 (2019) (discussing Kashmiri political mobilization against the "Hindu State" under the ruling dynasty).

³⁴ See Webb, *supra* note 31, at 477.

³⁵ Hotly debated still is why and how these invaders came to Kashmir. Some accounts characterize the invasion as Pakistani orchestrated to secure Kashmir; others present an independent

Maharaja Singh's hand: he signed the Instrument of Accession in exchange for India's defensive support.³⁶ Despite assurances for a plebiscite from Indian government officials³⁷ and later the United Nations,³⁸ an inquiry into the desires of the people never took place. Instead, what resulted was the first of three wars between India and Pakistan over Kashmir³⁹ and the drafting of Article 370 of the Indian Constitution.

Article 370 set out to create an expansive, explicit, and *sui generis* semi-autonomous regime for the state. First, Article 370 curtailed the powers of the central government over Kashmir to three domains: defense, external affairs, and communication.⁴⁰ Only Article I of the Indian Constitution and Article 370 itself would apply to the state of their own force,⁴¹ though other constitutional provisions could be applied through presidential orders, provided they received the "consultation" or "concurrence" of the state government.⁴² Lastly, it provided that the President could render the article inoperative "by public notification," but only with "the recommendation of the [state] Constituent Assembly."⁴³ In effect, Jammu and Kashmir became the only state empowered to block the application of federal legislation by not passing it in the state legislature.⁴⁴

One of the most critical exercises of Article 370 powers was the adoption of Article 35A to the Indian Constitution via Constitution (Application to Jammu and Kashmir) Order, 1954.⁴⁵ The order empowered the state legislature to both define the "permanent residents" of the

group rushing to liberate subjugated Muslims suffering under an oppressive Hindu rule in Kashmir. GUHA, *supra* note 26, at 64–65.

³⁶ The Maharaja's Letter to the Governor-General of India, Lord Mountbatten (Oct. 26, 1947), *reprinted in* A.G. NOORANI, ARTICLE 370: A CONSTITUTIONAL HISTORY OF JAMMU AND KASHMIR 41–42 (2011). Circumstances surrounding the Maharaja's signing of the Instrument of Accession are also contested, with scholars arguing that the accession was induced through false promises. *See, e.g.*, CHANDHOKE, *supra* note 30, at 101.

³⁷ Letters between Lord Mountbatten and Maharaja Singh suggest that although India would aid Kashmir militarily given the invasion, "as soon as law and order ha[d] been restored in Kashmir . . . the question of the State's accession should have been settled by a reference to the people." Letter from Governor-General, India, Delhi, to Maharaja Sahib (Oct. 27, 1947), *reprinted in* NOORANI, *supra* note 36, at 43 [hereinafter Letter from Governor-General].

³⁸ JAMMU KASHMIR COAL. OF CIV. SOC'Y, OCCUPATIONAL HAZARD: THE JAMMU AND KASHMIR FLOODS OF SEPTEMBER 2014, at 4–5 (2015).

³⁹ *See* Letter from Governor-General, *supra* note 37, at 42–43.

⁴⁰ India Const. art. 370, cl. 1(a–b).

⁴¹ *Id.* cl. 1(c).

⁴² Presidential orders require the "consultation" for matters within the three domains and the "concurrence" for all other matters. *Id.* cl. 1(d).

⁴³ *Id.* cl. 3.

⁴⁴ Haseeb A. Drabu, Opinion, *Modi's Majoritarian March to Kashmir*, N.Y. TIMES (Aug. 8, 2019), <https://www.nytimes.com/2019/08/08/opinion/modis-majoritarian-march-to-kashmir.html> [https://perma.cc/B3RY-NTVM].

⁴⁵ Ministry of Law, Constitution (Application to Jammu and Kashmir) Order, 1954, C.O. 48 (Issued on May 14, 1954).

state and attach specific privileges to such residency, including the ability to settle in the state and purchase land and immovable property.⁴⁶

With this legal regime as the backdrop, the Constituent Assembly adopted its own state constitution to further define the relationship between the region and the government of India.⁴⁷ Building on the prior order, the Constitution notably limited “permanent residents” to long-time residents in the State.⁴⁸ The effect of this provision was to safeguard Kashmir from outsiders — a movement initially launched by Kashmiri Hindus hoping to keep “Kashmir for Kashmiris” in the 1920s.⁴⁹ Although the Constituent Assembly later dissolved, the Supreme Court maintained that Article 370 “continue[d] to be in force.”⁵⁰

B. A Hollowed Autonomy

Article 370’s “force” proved to be *de minimis*. Just as the plebiscite was a “pledge not redeemed,”⁵¹ Article 370’s promise of autonomy was largely unfulfilled. In the years following Partition, forty-seven presidential orders extended 260 of the Indian Constitution’s 395 articles to Kashmir.⁵² India removed Kashmir’s unique legal features — like the Prime Ministership.⁵³ Litigation “to remove destructive provisions of the Article 370” is not a present-day anomaly;⁵⁴ even where litigation was unsuccessful, the article’s dilution was not.⁵⁵ The federal and state administrative apparatus — from elections to Indian central rule over the state — has largely facilitated this dilution.⁵⁶ In particular, elections

⁴⁶ *Id.* pt. 4, cl. (j). Other states in India have similar restrictions on land ownership as described in Vakasha Sachdev, *Despite J&K Changes, You Still Can't Buy Land in These States*, THE QUINT (Oct. 29, 2020, 9:29 AM), <https://www.thequint.com/news/india/jammu-kashmir-land-laws-amended-other-states-where-outsiders-cant-purchase-property-himachal-sikkim-arunachal-tribal-areas> [https://perma.cc/N3ES-U6N9].

⁴⁷ Jammu and Kashmir Const., Nov. 17, 1956, arts. 3–5.

⁴⁸ Specifically, “permanent residents” was limited to those who were living in the state as of May 14, 1954, when the law came into effect, and those who had lived in the state for ten years prior to that date and had legally acquired immovable property in the state. *Id.* art. 6.

⁴⁹ See Mridu Rai, *History of Betrayals in Kashmir*, FRONTLINE (Aug. 30, 2019), <https://frontline.thehindu.com/cover-story/article29053014.ece> [https://perma.cc/U6YN-8BHV].

⁵⁰ State Bank of India v. Santosh Gupta, AIR 2017 SC 25, ¶ 12.

⁵¹ RAI, *supra* note 33, at 289.

⁵² See Angana P. Chatterji, *Kashmir: A Place Without Rights*, JUST SEC. (Aug. 5, 2020), <https://www.justsecurity.org/71840/kashmir-a-place-without-rights> [https://perma.cc/Y4GS-QD4Z].

⁵³ Jeffrey Gettleman et al., *India Revokes Kashmir's Special Status, Raising Fears of Unrest*, N.Y. TIMES (Aug. 5, 2019), <https://www.nytimes.com/2019/08/05/world/asia/india-pakistan-kashmir-jammu.html> [https://perma.cc/6LEG-JZ2X].

⁵⁴ See *History*, BHARATIYA JANATA PARTY, <http://www.apbjp.org/eng/history> [https://perma.cc/T7H3-DTQP].

⁵⁵ See *We Diluted Article 370 Twelve Times Without Controversy: Congress*, INDIA TODAY (Nov. 3, 2019), <https://www.indiatoday.in/india/story/we-diluted-article-370-twelve-times-without-controversy-congress-1615399-2019-11-03> [https://perma.cc/89DG-N8B9].

⁵⁶ In fact, it is the rhetorical ability to participate in political life that cements settler colonial power. See Veracini, *supra* note 23, at 30.

have largely been criticized as “showpiece[s] of [Indian] legitimacy” in Kashmir.⁵⁷ The introduction of national parliamentary elections eroded the distinction between Kashmir and the rest of India.⁵⁸ As for state elections, an interventionist central government often uninstalled, reinstalled, and hand-picked local leaders.⁵⁹ The result? A gradient of “pro-India” state political parties.⁶⁰

The use of Governor’s⁶¹ and President’s⁶² Rule in Kashmir has repeatedly subjected the region to the political whims of the central government. Both machineries effectively accomplish the same ends⁶³: where the state government is perceived as inoperable, Kashmir is put under central rule of the Indian government via a federally appointed governor.⁶⁴ Having entered central rule eight times⁶⁵ and having faced the longest duration of President’s Rule of any state in India,⁶⁶ central rule has particularly silenced Kashmiri political voices. During Kashmir’s longest spell of President’s Rule, the problematic⁶⁷ Armed Forces (Jammu

⁵⁷ Mohamad Junaid, *Death and Life Under Occupation: Space, Violence, and Memory in Kashmir*, in *EVERYDAY OCCUPATIONS* 158, 164 (Kamala Visweswaran ed., 2013); see *id.* at 158–90.

⁵⁸ See Haley Duschinski, “Survival Is Now Our Politics”: Kashmiri Hindu Community Identity and the Politics of Homeland, 12 *INT’L J. HINDU STUD.* 41, 53 (2008).

⁵⁹ See generally Sten Widmalm, *The Rise and Fall of Democracy in Jammu and Kashmir*, 37 *ASIAN SURV.* 1005 (1997) (detailing notable and perceived-as-rigged elections in Kashmir).

⁶⁰ See Rifat Fareed, “End of The Road” for Pro-India Politicians in Kashmir, *AL JAZEERA* (Sept. 17, 2020), <https://www.aljazeera.com/news/2020/9/17/end-of-the-road-for-pro-india-politicians-in-kashmir> [https://perma.cc/X63V-9YFW].

⁶¹ Jammu and Kashmir Const., Nov. 17, 1956, art. 92.

⁶² India Const. art. 356.

⁶³ Kashmir is unique in that it enters into Governor’s rule for six months before President’s rule. If the state government is not restored in those six months, the state moves from Governor’s rule to President’s rule. In both situations, power is exercised over Kashmir through the centrally appointed Governor. Muzamil Jaleel, *How Governor’s Rule and President’s Rule Set J&K Apart from Other States*, *INDIAN EXPRESS* (Dec. 14, 2018, 1:03 PM), <https://indianexpress.com/article/explained/how-governors-rule-and-presidents-rule-set-jk-apart-from-other-states-satya-pal-malik-5492730> [https://perma.cc/4VMX-7SKB]; see also Prabhash K. Dutta, *Why Governor’s and Not President’s Rule in Jammu and Kashmir*, *INDIA TODAY* (June 20, 2018), <https://www.indiatoday.in/india/story/why-governor-s-and-not-president-s-rule-in-jammu-and-kashmir-1264794-2018-06-20> [https://perma.cc/WM2J-5GYZ].

⁶⁴ India Const. art. 356. See generally Bhagwan D. Dua, *Presidential Rule in India: A Study in Crisis Politics*, 19 *ASIAN SURV.* 611 (1979) (conducting a systematic analysis of presidential rule in India and the way it has been used by the central government).

⁶⁵ See Santosh Chaubey, *Jammu & Kashmir Under Governor’s Rule for Eighth Time*, *INDIA TODAY* (June 20, 2018, 6:18 PM), <https://www.indiatoday.in/india/story/jammu-kashmir-under-governor-s-rule-for-eighth-time-1265259-2018-06-20> [https://perma.cc/7QGA-KZDP].

⁶⁶ Vignesh Radhakrishnan & Sumant Sen, *How Many Times Has President’s Rule Been Imposed Across States?*, *THE HINDU* (Nov. 19, 2019, 6:08 PM), <https://www.thehindu.com/news/national/how-many-times-has-presidents-rule-been-imposed-across-states/article30017580.ece> [https://perma.cc/R74Q-QE6V].

⁶⁷ See *infra* sections IV.A–B, pp. 2546–49.

and Kashmir) Special Powers Act⁶⁸ and the Public Safety Act⁶⁹ were respectively extended to and expanded in the region.⁷⁰ And indeed, it was the use of President's rule that enabled the 2019 abrogation.⁷¹

As India chipped away at Kashmir's autonomy, a Kashmiri freedom struggle was amplified. The movement has taken on rich unarmed forms, including protests, boycotts, graffiti, rap, and marking Indian Independence Day as a "Black Day."⁷² But it also has had its armed moments, which resulted in the forcible removal and killing of members of the Kashmiri Hindu minority following controversial elections in the late 1980s.⁷³

Parallel to the freedom movement is an Indian-launched counterinsurgency strategy, framed around terrorism and facilitated by the deployment of hundreds of thousands of troops to Kashmir.⁷⁴ Human rights groups estimate that there is one armed person for every seventeen civilians and roughly seven armed personnel to every square kilometer of land in the region,⁷⁵ securing Kashmir's title as one of the world's most densely militarized regions.⁷⁶ These numbers stand in stark contrast to India's estimates of perceived "militants," which are only in the hundreds.⁷⁷ The militarization has spawned a valley rife with human rights abuse.⁷⁸

⁶⁸ The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.

⁶⁹ Jammu and Kashmir Public Safety Act, 1978.

⁷⁰ The Armed Forces (Jammu and Kashmir) Special Powers Act was promulgated in the region in 1990 when Kashmir was under a six-year President's rule. AMNESTY INT'L, A "LAWLESS LAW": DETENTIONS UNDER THE JAMMU AND KASHMIR PUBLIC SAFETY ACT 10 (2011), https://www.amnestyusa.org/files/asa200012011en_11.pdf [<https://perma.cc/N8KJ-Z744>]. Originally intended to punish timber smugglers, *id.* at 12, the Public Safety Act caused a peak in detentions in the early to mid-1990s, *id.* at 13.

⁷¹ See *infra* p. 2542.

⁷² See Khurram Abbas, *Strategizing Kashmiri Freedom Struggle Through Nonviolent Means*, 16 POL'Y PERSPS. 41, 43 (2019).

⁷³ See Duschinski, *supra* note 58, at 46.

⁷⁴ See Bhan et al., *supra* note 28, at 2.

⁷⁵ See JAMMU KASHMIR COAL. OF CIV. SOC'Y, *supra* note 38, at 36–37; see also JAMMU KASHMIR COAL. OF CIV. SOC'Y, STRUCTURES OF VIOLENCE: THE INDIAN STATE IN JAMMU AND KASHMIR 10–16 (2015) (detailing a breakdown of the armed personnel in Kashmir) [hereinafter JAMMU KASHMIR COAL. OF CIV. SOC'Y, STRUCTURES].

⁷⁶ See JAMMU KASHMIR COAL. OF CIV. SOC'Y, STRUCTURES, *supra* note 75, at 4.

⁷⁷ See Ajaz Ashraf, "Do You Need 700,000 Soldiers to Fight 150 Militants?": Kashmiri Rights Activist Khurram Parvez, SCROLL.IN (July 21, 2016, 6:30 AM), <https://scroll.in/article/812010/do-you-need-700000-soldiers-to-fight-150-militants-kashmiri-rights-activist-khurram-parvez> [<https://perma.cc/VR3S-V7YU>].

⁷⁸ See generally OFF. OF THE UNITED NATIONS HIGH COMM'R FOR HUM. RTS., UPDATE OF THE SITUATION OF HUMAN RIGHTS IN INDIAN-ADMINISTERED KASHMIR AND PAKISTAN-ADMINISTERED KASHMIR FROM MAY 2018 TO APRIL 2019 (2019), https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf [<https://perma.cc/SU6R-YZQR>]; ANGANA CHATTERJI ET AL., BURIED EVIDENCE: UNKNOWN, UNMARKED, AND MASS GRAVES IN INDIA-ADMINISTERED KASHMIR (2009); ANGANA CHATTERJI ET AL., MILITARIZATION WITH IMPUNITY: A BRIEF ON RAPE AND MURDER IN SHOPIAN, KASHMIR (2009).

Ultimately, Article 370 was much more a symbol of Kashmir's desired autonomy than the mechanism for implementing it. To the extent that Article 370 had more than symbolic weight, it was manifested in Article 35A, which remained largely untouched by the federal government. By safeguarding the rights to owning land, Article 35A served as Kashmir's primary line of defense against outside interference. To tinker with these articles, then, would be "to set[] a powder keg on fire."⁷⁹

C. *Cultivating a Settler Desire*

The erosion of Kashmir's autonomy paralleled — and perhaps stemmed from — a growing narrative of desire for Kashmir. While Kashmir's land was long "prize[d]"⁸⁰ for its fertile soil and strategic geographic location,⁸¹ this India-crafted narrative had a more intimate fervor. Kashmir — said the first Prime Minister of India — was a "supremely beautiful woman, whose beauty is almost impersonal and above human desire."⁸² It is ultimately this desire that has furthered the settler colonial project today.

The lopsided emphasis on Kashmir's Hindu heritage has supplied non-Kashmiri Hindus with both the reason to desire the region and the justifications to do so.⁸³ In particular, the promotion of the Amarnath Yatra — a Hindu pilgrimage to an ice formation believed to represent Lord Shiva⁸⁴ — has grown increasingly over the years through increased institutional support.⁸⁵ Such support has been particularly effective where it has equated the pilgrimage with national pride — where the "yearning for Moksha (salvation)" was also "a befitting gesture of solidarity with . . . soldiers . . . fighting the enemy to defend our borders."⁸⁶

By bringing Hindu temples and relics to the fore, the Indian state and its proponents have only fueled the idea that it is Muslim Kashmiris who are the "exogenous 'Others.'"⁸⁷ In fact, India has crafted Kashmir's

⁷⁹ "Tinkering with Article 35A Akin to Setting Powder Keg on Fire" Mehbooba Mufti Warns Centre Against Revoking Provision, FIRSTPOST (July 29, 2019, 1:37 AM), <https://www.firstpost.com/politics/mehbooba-mufti-issues-warning-to-centre-against-revoking-article-35a-says-meddling-with-it-is-like-playing-with-fire-7069231.html> [<https://perma.cc/FS4V-XFEF>].

⁸⁰ GUHA, *supra* note 26, at 78 (quoting *India: Marching Through Kashmir*, TIME (Oct. 10, 1949), <http://content.time.com/time/subscriber/article/0,33009,800911,00.html> [<https://perma.cc/CM6R-DWLD>]).

⁸¹ See CHANDHOKE, *supra* note 30, at 19.

⁸² KORBEL, *supra* note 1, at 4.

⁸³ See LORENZO VERACINI, SETTLER COLONIALISM: A THEORETICAL OVERVIEW 3 (2010) (noting that settlers see themselves not as invaders, but as natives returning to *their* country).

⁸⁴ See JAMMU KASHMIR COAL. OF CIV. SOC'Y, AMARNATH YATRA: A MILITARIZED PILGRIMAGE 9 (2017).

⁸⁵ See *id.* at 22–24.

⁸⁶ *Id.* at 170 (quoting PRESS INFO. BUREAU, AMARNATH YATRA — 99 ACID TEST OF DEVOTION (1997)).

⁸⁷ See LORENZO VERACINI, THE SETTLER COLONIAL PRESENT 38 (2015). "Kashmiri Muslims are doubly marked as the Other: first as Muslims and second as Kashmiris who are ungovernable, and committed to a [sic] irrepressible struggle for plebiscite and sovereignty." Ather

public identity into a Hindu one, as more and more highly romanticized pilgrimages emerge in the Kashmir Valley.⁸⁸ Indeed, it was the Amarnath pilgrimage that the state heavily advertised in the months leading up to the abrogation.⁸⁹ Ultimately, where India is depicted as the Hindu imaginary “Bharat Mata” (Mother India), Kashmir, in India’s eyes, is her head.⁹⁰

Kashmir’s militarization is designed to make Kashmir a place non-Kashmiri Hindus can feel entitled to claim as their own, and to reimagine a Kashmiri identity that excludes its Muslim population. The Amarnath pilgrimage is a full exercise of militarized tourism, packaged neatly under the title “Operation Shiva.”⁹¹ By emphasizing the danger in the Valley with each annual pilgrimage,⁹² the military is there to remind pilgrims not only that this is their land but also that they can feel safe in it.⁹³ India has similarly used the military in proposals for returning the Kashmiri Hindu diaspora back to the region, suggesting enclosed, heavily guarded colonies equipped with their own amenities.⁹⁴ This ahistorical vision of a Kashmiri society without Kashmiri Muslims underscores the state’s investment in eliminating the aspects of Kashmiri identity that challenge its settler colonial narrative.

This settler narrative, like most, was still intimately linked to the land, with the Indian state having illegally seized Kashmiri territory well

Zia, *The Haunting Specter of Hindu Ethnonationalist-Neocolonial Development in the Indian Occupied Kashmir*, 63 DEVELOPMENT 60, 61 (2020).

⁸⁸ JAMMU KASHMIR COAL. OF CIV. SOC’Y, *supra* note 84, at 153–64.

⁸⁹ Emily Schmall, *India Promotes Hindu Pilgrimage as Sign of Peace in Kashmir*, SEATTLE TIMES (Aug. 1, 2019, 5:41 PM), <https://www.seattletimes.com/nation-world/nation/india-promotes-hindu-pilgrimage-as-sign-of-peace-in-kashmir> [<https://perma.cc/BP29-4G3F>] (describing signs tourists see upon arriving in Kashmir); *see also* Alasdair Pal, *India Boosts Hindu Pilgrimage to Holy Cave in Conflict-Torn Kashmir*, REUTERS (July 28, 2019, 1:15 AM), <https://www.reuters.com/article/uk-india-kashmir-pilgrimage-idUKKCN1UN04Q> [<https://perma.cc/MY7T-9HUV>] (noting that the state spent “\$72 million on preparations for the six-week event”).

⁹⁰ *See* Nitasha Kaul, *India’s Obsession with Kashmir: Democracy, Gender, (Anti-)nationalism*, 119 FEMINIST REV. 126, 132 (2018). The fifth picture depicted in *Article 370: The Indians Celebrating Kashmir’s New Status*, BBC (Aug. 9, 2019), <https://www.bbc.com/news/world-asia-india-49250594> [<https://perma.cc/3NUU-YQ2L>], shows celebrating Indians after the abrogation with a poster that depicts Kashmir as the head of “Bharat Mata.”

⁹¹ *See* JAMMU KASHMIR COAL. OF CIV. SOC’Y, *supra* note 38, at 60.

⁹² *See id.* In July 2019, many of the security measures taken ahead of the pilgrimage facilitated the lockdown that accompanied abrogation. *See* Rifat Fareed, *Highway Regulation for Hindu Pilgrimage Angers Kashmir Residents*, AL JAZEERA (July 5, 2019), <https://www.aljazeera.com/news/2019/7/5/highway-regulation-for-hindu-pilgrimage-angers-kashmir-residents> [<https://perma.cc/WU8P-AT7K>].

⁹³ *Cf.* Lloyd & Wolfe, *supra* note 15, at 114 (explaining how a part of settler colonial violence in the case of Zionism is a “persistence of a psychic ‘state of siege’: the representation of the world as . . . populated by uncivil peoples who pose . . . an ‘existential threat’ to civil subjects”).

⁹⁴ *See* Devjyot Ghoshal & Alasdair Pal, *India’s Ruling Party to Revive Plan for Hindu Settlements in Kashmir*, REUTERS (July 12, 2019, 4:47 AM), <https://www.reuters.com/article/us-india-kashmir-hindu-exclusive/exclusive-indias-ruling-party-to-revive-plan-for-hindu-settlements-in-kashmir-idUSKCN1U7142> [<https://perma.cc/K94Y-M9NM>].

before the abrogation. As of 2018, military forces had illegally grabbed nearly 54,000 acres of land in Kashmir.⁹⁵ Included in this occupied land is not just strategic borders but civilian infrastructure like hotels, sports stadiums, university facilities, and hospitals.⁹⁶ Occupied land has also frequently, and perhaps conveniently, overlapped with resource-rich regions, like those known for saffron production.⁹⁷ Although unsuccessful, the central government had even attempted to transfer forest land to construct temporary shelters and facilities for Amarnath pilgrims.⁹⁸

India's settler-like desire has infected every aspect of life in Kashmir. Signs greeting Indian tourists in Kashmir emphasize not only that Kashmir is *atoot ang* — an “integral part” — of India, but also that it is “India's crown,” and that to “[l]ove Kashmir, [is to] love India.”⁹⁹ Development projects, like the Kashmir Railway Project, underscore attempts to further Kashmir's assimilation into the nation.¹⁰⁰ Bollywood cinema has also exploited Kashmir's landscape for nationalist ends, first portraying it as “a pastoral space emptied of popular unrest or political aspirations”¹⁰¹ and later “chastiz[ing] the Valley” for forgetting this imagined past.¹⁰² Those same movies regularly depict romance between the Indian male tourist and the Kashmiri woman¹⁰³ — a not-so-subtle allegory for assimilation and replacement.

⁹⁵ See Fayaz Wani, *Over 4.30 Lakh Kanals of Land in Jammu and Kashmir Under Occupation of Security Forces*, NEW INDIAN EXPRESS (Jan. 10, 2018, 8:41 PM), <https://www.newindianexpress.com/nation/2018/jan/10/over-430-lakh-kanals-of-land-in-jammu-and-kashmir-under-occupation-of-security-forces-1750088.amp> [<https://perma.cc/8793-GDBG>].

⁹⁶ See JAMMU KASHMIR COAL. OF CIV. SOC'Y, *supra* note 38, at 42.

⁹⁷ See *id.* at 46–47.

⁹⁸ See *id.* at 53–54.

⁹⁹ Mohamad Junaid, *Opinion, Peace, Tourism and Political Games in Kashmir*, AL JAZEERA (July 29, 2012), <https://www.aljazeera.com/opinions/2012/7/29/peace-tourism-and-political-games-in-kashmir> [<https://perma.cc/G7ST-6MLV>]; see also *Jammu and Kashmir “Was, Is and Shall Forever” Remain Its Integral Part: India Tells Pakistan at UNHRC Meeting*, TIMES INDIA (Feb. 26, 2020, 10:09 PM), <https://timesofindia.indiatimes.com/india/jk-was-is-and-shall-forever-remain-its-integral-part-india-tells-pakistan-at-unhrc-meeting/articleshow/74318873.cms> [<https://perma.cc/SS8B-DXMS>].

¹⁰⁰ Betwa Sharma, *A Train Through Kashmir*, N.Y. TIMES: INDIA INK (Oct. 30, 2013, 8:24 AM), <https://india.blogs.nytimes.com/2013/10/30/a-train-through-kashmir> [<https://perma.cc/E5Y4-Z8B2>].

¹⁰¹ ANANYA JAHANARA KABIR, *TERRITORY OF DESIRE* 44 (2009). Bollywood directors have begun reserving film titles to tell romanticized stories of abrogation. See *Kashmir Hamara Hai to Dhara 370 Filmmakers Rush to Book Titles After Article 370 Scrapped*, INDIA TODAY (Aug. 7, 2019, 12:30 PM), <https://www.indiatoday.in/movies/bollywood/story/kashmir-hamara-hai-to-dhara-370-filmmakers-rush-to-book-titles-after-article-370-scrapped-1578182-2019-08-07> [<https://perma.cc/TWW4-LMQ9>].

¹⁰² KABIR, *supra* note 101, at 48; see also *id.* at 45–50.

¹⁰³ See Kaul, *supra* note 90, at 132; see also *A Whole New Sub-genre of Songs Emerges About Getting Kashmiri Bahus, Buying Land in Valley*, SCROLL.IN (Aug. 12, 2019, 10:27 AM), <https://scroll.in/video/933520/watch-there-is-a-whole-new-sub-genre-of-songs-inspired-by-kashmir-and-the-article-370-controversy> [<https://perma.cc/SE6N-WAJN>].

India's settler desire was most pronounced with the 2014 election, and then 2019 reelection, of the Hindu nationalist Bharatiya Janata Party (BJP). Kashmiris, in BJP's India, were "contrapuntal symbols — of terrorist violence, illegitimate religious impulses, and sedition — for contriving [their] mythical Hindu nation."¹⁰⁴ Realizing the Hindu nation required the abrogation of Article 370, an explicit promise made by the BJP in their 2019 election manifesto.¹⁰⁵

III. A SETTLER COLONIAL PROJECT REALIZED

Before launching their legal attack on August 5, the Indian government waged a familiar psychological one.¹⁰⁶ It began with the further militarization of the region.¹⁰⁷ Then, the government evacuated thousands of Hindu pilgrims and tourists on August 3, citing a Pakistani-backed terrorist attack.¹⁰⁸ Non-Kashmiri students attending Kashmiri universities were also ordered to leave.¹⁰⁹ When pressed, Indian officials explicitly assured state political leaders that abrogating Articles 370 and 35A was not in question; any reports otherwise were "rumor mongering."¹¹⁰ Their assurances, later exposed as lies, launched Kashmiris into a familiar cadence: canceling family events, moving ill family members near hospitals, and stockpiling essentials.¹¹¹

By August 5, the siege was in full swing. India imposed a curfew and officers patrolled barbed-wired streets.¹¹² Former heads of state

¹⁰⁴ Mridu Rai, *Kashmiris in the Hindu Rashtra*, in MAJORITARIAN STATE: HOW HINDU NATIONALISM IS CHANGING INDIA 259, 259 (Angana P. Chatterji et al. eds., 2019).

¹⁰⁵ BHARATIYA JANATA PARTY, SANKALP PATRA: LOK SABHA 2019, at 12 (2019).

¹⁰⁶ See Rifat Fareed, *Panic in Kashmir After India Asks Tourists and Pilgrims to Leave*, AL JAZEERA (Aug. 2, 2019), <https://www.aljazeera.com/news/2019/8/2/panic-in-kashmir-after-india-asks-tourists-and-pilgrims-to-leave> [https://perma.cc/GT5J-7DSN].

¹⁰⁷ Over the course of the year leading up to the abrogation, roughly 35,000 troops were sent to Kashmir in the name of "maintaining law and order" and as part of a massive security drive. See Tariq Bhat, *J&K Surge: 25,000 Troops Start Arriving; Total Since 2018 Reaches 75,000*, THE WEEK (Aug. 2, 2019, 10:54 PM), <https://www.theweek.in/news/india/2019/08/02/jk-surge-25k-troops-start-arriving-total-since-2018-reaches-75.html> [https://perma.cc/X3SK-MWVK].

¹⁰⁸ See *India Orders Tourists to Leave Kashmir Over "Terror Threat"*, BBC (Aug. 3, 2019), <https://www.bbc.com/news/world-asia-india-49222571> [https://perma.cc/6SGG-K45K].

¹⁰⁹ See Ather Zia, Opinion, *There Is Reason to Fear for the Safety of Every Kashmiri in India*, AL JAZEERA (Aug. 5, 2019), <https://www.aljazeera.com/opinions/2019/8/5/there-is-reason-to-fear-for-the-safety-of-every-kashmiri-in-india> [https://perma.cc/RVN2-BNRE].

¹¹⁰ *No Reason to Panic, Only Rumor-Mongering Going On: Governor Satya Pal Malik on Tensions in J&K*, FIN. EXPRESS (Aug. 3, 2019, 7:00 PM), <https://www.financialexpress.com/india-news/no-reason-to-panic-only-rumor-mongering-going-on-governor-satyapal-malik-on-tensions-in-jk/1665200> [https://perma.cc/P3KL-NNX5].

¹¹¹ See *id.*

¹¹² See *Kashmir: Curfew-Like Restrictions Imposed on Movement of People*, INDIA TODAY (Aug. 5, 2019, 1:52 AM), <https://www.indiatoday.in/india/story/jammu-and-kashmir-curfew-section-144-imposed-1577218-2019-08-05> [https://perma.cc/DF5V-256L].

and pro-freedom leaders were arrested.¹¹³ Both internet and cell phone services were suspended.¹¹⁴ Before India even made its incendiary attack, Kashmir and its people were left in the dark.

With the political backdrop of President's rule in Kashmir,¹¹⁵ the President of India issued Constitutional Order 272.¹¹⁶ Pursuant to Article 370, the order amended Article 367 — which enshrines the Constitution's interpretative framework¹¹⁷ — as it relates to Jammu and Kashmir.¹¹⁸ Although Article 370 requires the state government's concurrence to make such a change,¹¹⁹ the President took the Governor's consent as a sufficient substitute.¹²⁰

C.O. 272 had two key consequences. First, it streamlined the process to amend and abrogate Article 370, requiring only consultation with the Governor.¹²¹ Second, by superseding¹²² the constitutional order from which Article 35A germinated, it made Article 35A inoperative.¹²³

The legal changes that flowed from C.O. 272's groundwork were swift. On August 5, the upper house of Parliament passed a statutory resolution recommending the President of India proceed with Article 370's abrogation.¹²⁴ Later that day, Presidential Order C.O. 273 acted upon the

¹¹³ See Rifat Fareed, *Key Kashmir Political Leaders Arrested by India Since August 5*, AL JAZEERA (Aug. 17, 2019), <https://www.aljazeera.com/news/2019/8/17/key-kashmir-political-leaders-arrested-by-india-since-august-5> [https://perma.cc/4KAB-Y76J].

¹¹⁴ See *Kashmir: Curfew-Like Restrictions Imposed on Movement of People*, *supra* note 112.

¹¹⁵ In June 2018, the BJP pulled out of a coalition government with state parties in Kashmir, forcing the state first into Governor's rule and then President's rule. See *President's Rule in J&K Extended for 6 More Months Beginning July 3*, ECON. TIMES (June 12, 2019, 9:20 PM), <https://economictimes.indiatimes.com/news/politics-and-nation/president-rule-in-jk-to-be-extended-for-6-more-months/articleshow/69759938.cms> [https://perma.cc/Q4CR-FC6U].

¹¹⁶ Ministry of Law and Justice, *The Constitution (Application to Jammu and Kashmir) Order*, 2019, C.O. 272 (Notified on August 5, 2019) [hereinafter C.O. 272].

¹¹⁷ See India Const. art. 367.

¹¹⁸ C.O. 272, *supra* note 116.

¹¹⁹ India Const. art. 370, cl. (1)(d).

¹²⁰ This move was criticized as unconstitutional. See, e.g., Gautam Bhatia, *The Article 370 Amendments: Key Legal Issues*, INDIAN CONST. L. & PHIL. (Aug. 5, 2019), <https://indconlawphil.wordpress.com/2019/08/05/the-article-370-amendments-key-legal-issues> [https://perma.cc/QM53-K4YA]; Nivedhitha K., *Guest Post: Article 370: The Constitutional Challenge*, INDIAN CONST. L. & PHIL. (Aug. 13, 2019), <https://indconlawphil.wordpress.com/2019/08/13/guest-post-article-370-the-constitutional-challenge> [https://perma.cc/CS4A-7RPT].

¹²¹ Specifically, C.O. 272 made two key changes to the text: (1) the Constitution's references to the "Government of the State" would be construed to include the "Governor of Jammu and Kashmir"; (2) for purposes of rendering Article 370 inoperative, the "'Constituent Assembly of the State . . .'" would read "Legislative Assembly of the State." C.O. 272, *supra* note 116, at cl. 2 (emphasis added).

¹²² *Id.* at cl. 1(2).

¹²³ See K. Venkataramanan, *Explained: How the Status of Jammu and Kashmir Is Being Changed*, HINDU (Aug. 6, 2019, 10:08 AM), <https://www.thehindu.com/news/national/other-states/explained-how-the-status-of-jammu-and-kashmir-is-being-changed/article28822866.ece?homepage=true> [https://perma.cc/8TTA-BS3T].

¹²⁴ Statutory Resolution (Aug. 5, 2019), <http://164.100.47.5/newlobsessions/sessionno/249/So50819.pdf> [https://perma.cc/W7WE-KYQN].

recommendation, causing Article 370 to “cease to be operative” and affixing all provisions of the Indian Constitution upon Kashmir.¹²⁵ In parallel, the Parliament also passed the Jammu and Kashmir Reorganisation Act, 2019.¹²⁶ The Act fractured the state into two union territories,¹²⁷ which would be under the direct control of the central government. One union territory included Jammu and the Kashmir Valley; the other, Ladakh.¹²⁸ Thus, over a few days, the Government of India not only revoked Kashmir’s special autonomous status but also erased its identity as a state altogether. While screams in opposition rang through the chambers of Parliament,¹²⁹ the deathly silence in Kashmir was more stifling. The entire map of Kashmir had changed without its people knowing.¹³⁰

On August 15, 2019, India would simultaneously celebrate its seventy-third Independence Day and forcibly hold Kashmiris under lockdown.¹³¹ What seemed like a sinister irony became the norm. In the seven months that followed,¹³² Kashmiris would spend Eid,¹³³ weddings,¹³⁴ medical emergencies,¹³⁵ and funerals¹³⁶ in an eerie blackout. The economic loss — an estimated \$2.4 billion — would pale in comparison only to the human one.¹³⁷ Kashmiri lives were inundated with

¹²⁵ Ministry of Law and Justice, Declaration Under Article 370(3) of the Constitution, C.O. 273 (Notified on August 6, 2019).

¹²⁶ The Jammu and Kashmir Reorganisation Act, 2019.

¹²⁷ *Id.* §§ 3–4.

¹²⁸ *Id.* The first would have a legislature, but the second would not. *Id.* §§ 14, 58.

¹²⁹ DeshGujaratHD, *Amit Shah’s Historic Announcement in Rajya Sabha on Jammu & Kashmir*, 370, 35A, *Ladakh*, YOUTUBE at 9:40 (Aug. 5, 2019), <https://www.youtube.com/watch?v=U1ZBHsZAmI4> [<https://perma.cc/SSE4-ZUEB>].

¹³⁰ See Alexandra Ma, *The Phone and Internet Blackout in Kashmir Is So Total that Locals Reportedly Don’t Know India Rewrote Their Constitution*, BUS. INSIDER (Aug. 8, 2019, 6:32 AM), <https://www.businessinsider.com/kashmir-blackout-locals-dont-know-india-revoked-autonomy-report-2019-8> [<https://perma.cc/M6P9-KF42>].

¹³¹ See *India Celebrates Independence Day Despite Kashmir Being Under Lockdown*, TRTWORLD (Aug. 15, 2019), <https://www.trtworld.com/asia/india-celebrates-independence-day-despite-kashmir-being-under-lockdown-29026> [<https://perma.cc/NUQ5-2YX4>].

¹³² See *India Restores Internet in Kashmir After 7 Months of Blackout*, AL JAZEERA (Mar. 5, 2020), <https://www.aljazeera.com/news/2020/3/5/india-restores-internet-in-kashmir-after-7-months-of-blackout> [<https://perma.cc/W8ZG-VDMV>].

¹³³ See Azhar Farooq & Rebecca Ratcliffe, “*Our Hearts Are on Fire*”: Kashmir Spends Eid Al-Adha in Lockdown, THE GUARDIAN (Aug. 12, 2019, 12:35 PM), <https://www.theguardian.com/world/2019/aug/12/our-hearts-are-on-fire-kashmir-spends-eid-al-adha-in-lockdown> [<https://perma.cc/F28F-BMFA>].

¹³⁴ See Quratulain Rehbar, *Weddings in the Time of Kashmir Lockdown*, THE WIRE (Aug. 27, 2019), <https://thewire.in/rights/weddings-in-the-time-of-kashmir-lockdown> [<https://perma.cc/D5A9-JMKM>].

¹³⁵ See Preetika Rana & Vibhuti Agarwal, *India’s Kashmir Clampdown Turns Hospitals into “Graveyards,”* WALL ST. J. (Aug. 28, 2019, 11:52 AM), <https://www.wsj.com/articles/indias-kashmir-clampdown-turns-hospitals-into-graveyards-11566990962> [<https://perma.cc/C8R3-CFMW>].

¹³⁶ See *Kashmir Clampdown Means Even Funeral Rites Can’t Be Observed*, S. CHINA MORNING POST (Aug. 10, 2019, 2:30 PM), <https://www.scmp.com/news/asia/article/302259/kashmir-clampdown-means-even-funeral-rites-cant-be-observed> [<https://perma.cc/3F59-XRNX>].

¹³⁷ See Anando Bhakto, *Kashmir’s Endless Agony*, FRONTLINE (Aug. 14, 2020), <https://frontline.thehindu.com/the-nation/kashmirs-endless-agony/article32184848.ece> [<https://perma.cc/G72V-B7N9>].

reported army-instigated torture of children, sexual violence against women, disappearing of young men,¹³⁸ and arbitrary detention of civilians.¹³⁹ Twenty-three petitions challenging the abrogation of Articles 370 and 35A are pending in the Supreme Court of India, but the Court's pattern of avoidance on the Kashmir issue does not bode well for Kashmiris.¹⁴⁰

IV. THE LEGAL "ELIMINATION" OF THE KASHMIRI

The use of the settler colonial lens in Kashmir largely emerged in the aftermath of the abrogation. Critical Kashmir Studies have typically focused on the paradigms of illegal occupation,¹⁴¹ armed conflict,¹⁴² self-determination,¹⁴³ and colonization.¹⁴⁴ Even then, discussions of the settler colonial model in Kashmir have either focused primarily on a socio-political analysis or given a cursory legal one.¹⁴⁵ This Part focuses on

¹³⁸ See Alexandra Ma, *Armed Forces in Kashmir Are Detaining Children and Molesting Women and Girls amid a State-Wide Blackout, Report Claims*, BUS. INSIDER (Aug. 15, 2019, 7:12 AM), <https://www.businessinsider.com/kashmir-forces-detaining-kids-molesting-girls-amid-blackout-report-2019-8> [<https://perma.cc/6TH5-F4GY>].

¹³⁹ See Azhar Farooq & Rebecca Ratcliffe, "A Storm Has Hit My Life": The Kashmiri Families Torn Apart by Mass Arrests, THE GUARDIAN (Aug. 27, 2019, 6:26 AM), <https://www.theguardian.com/world/2019/aug/27/kashmir-families-torn-apart-mass-arrests-continue-india> [<https://perma.cc/6RP9-RVRL>].

¹⁴⁰ See Vakasha Sachdev, *Art 370: 1 Year On, How J&K Has Been Let Down by the Supreme Court*, THE QUINT (Aug. 5, 2020, 12:11 PM), <https://www.thequint.com/news/india/1-year-of-article-370-abrogation-supreme-court-has-let-down-people-of-kashmir> [<https://perma.cc/5WGJ-YGUB>].

¹⁴¹ See, e.g., Bhan et al., *supra* note 28; Haley Duschinski & Shrimoyee Nandini Ghosh, *Constituting the Occupation: Preventive Detention and Permanent Emergency in Kashmir*, 49 J. LEGAL PLURALISM & UNOFFICIAL L. 314 (2017); Junaid, *supra* note 57.

¹⁴² See, e.g., Idrees Kanth, Commentary, *Writing Histories in Conflict Zones*, 46 ECON. & POL. WKLY. (2011), <https://www.epw.in/journal/2011/26-27/commentary/writing-histories-conflict-zones.html> [<https://perma.cc/PKQ6-TCBN>].

¹⁴³ See, e.g., CHANDHOKE, *supra* note 30; Seema Kazi, *Sexual Crimes by State Personnel and Kashmir's Case for Self-Determination*, KASHMIR NARRATOR, <http://kashmirnarrator.com/sexual-crimes-state-personnel-kashmirs-case-self-determination> [<https://perma.cc/WJ9P-W76B>].

¹⁴⁴ See, e.g., Goldie Osuri, *Imperialism, Colonialism and Sovereignty in the (Post) Colony: India and Kashmir*, 38 THIRD WORLD Q. 2428 (2017); Partha Chatterjee, Opinion, *Kashmir Is the Test Bed for a New Model of Internal Colonialism*, THE WIRE (Aug. 28, 2019), <https://thewire.in/government/kashmir-is-the-test-bed-for-a-new-model-of-internal-colonialism> [<https://perma.cc/STB2-LVMG>]; Nitasha Kaul, Argument, *Kashmir Is Under the Heel of India's Colonialism*, FOREIGN POL'Y (Aug. 13, 2019, 10:51 PM), <https://foreignpolicy.com/2019/08/13/kashmir-is-under-the-heel-of-indias-colonialism> [<https://perma.cc/4X7A-FMZJ>].

¹⁴⁵ See, e.g., Zainab Ramahi & Azadeh Shahshahani, *Destroying to Replace: Settler Colonialism from Kashmir to Palestine*, VERSO (Aug. 10, 2020), <https://www.versobooks.com/blogs/4817-destroying-to-replace-settler-colonialism-from-kashmir-to-palestine> [<https://perma.cc/SS43-324G>]; Maknoon Wani, Commentary, *Kashmir and the Rise of Settler Colonialism*, HIMAL SOUTHASIAN (Sept. 1, 2020), <https://www.himalmag.com/kashmir-and-the-rise-of-settler-colonialism-2020> [<https://perma.cc/VL6N-48QU>].

the Indian and Kashmiri state law that has facilitated the gradual “elimination” of the indigenous Kashmiri. While the events of the abrogation were critical in making the purchase of land possible for new settlement communities, exploring Kashmir’s post-Partition legal infrastructure reveals how the settler colonial mindset has animated India’s relationship with the region long before the events of 2019. In particular, a military impunity regime, arbitrary detentions, and displacement are key facilitators of the project. In the words of Kashmiri scholars, “5 August was . . . not a beginning, not a diversion, not a rupture,” but the extension of seventy years of mass killings, blindings, torturings, disappearances, and rape,¹⁴⁶ all of which advanced the mission to — physically and symbolically — “eliminate” the Kashmiri.

A. Abuse and Impunity

In Kashmir, settler colonial and military machinery have “intertwine[d] with great and familiar intimacy.”¹⁴⁷ The latter has ultimately enabled the goal of the former: to erase. Although an official number has never been released, activists conservatively estimate that almost 700,000 members of the Indian army are stationed in Kashmir.¹⁴⁸ Intense human rights abuses have flowed from the militarization of Kashmiri soil. From 2008 to 2018 alone, an estimated 1,081 Kashmiri civilians were “eliminated” by security forces in extrajudicial executions.¹⁴⁹ Since the start of the pro-freedom uprising in 1989, activists estimate that at least 8,000 Kashmiris have been disappeared.¹⁵⁰ These tragedies are compounded by thousands of unknown, unmarked, and mass graves and incalculable cases of torture and sexual violence.¹⁵¹

A regime of military de jure and de facto impunity has perpetuated abuse against Kashmiri bodies. At the heart of this impunity is the Armed Forces (Jammu and Kashmir) Special Powers Act (AFSPA) of 1990. AFSPA in Jammu and Kashmir is modeled off the national Armed Forces Special Powers Act¹⁵² and was passed at a time when the state was under

¹⁴⁶ Samreen Mushtaq & Mudasir Amin, Analysis, *In Kashmir, Resistance Is Mainstream*, HIMAL SOUTHASIAN (Apr. 16, 2020), <https://www.himalmag.com/in-kashmir-resistance-is-mainstream-2020> [https://perma.cc/MP6C-J78B].

¹⁴⁷ Lloyd & Wolfe, *supra* note 15, at 115.

¹⁴⁸ See JAMMU KASHMIR COAL. OF CIV. SOC'Y, STRUCTURES, *supra* note 75, at 4.

¹⁴⁹ OFF. OF THE UNITED NATIONS HIGH COMM'R FOR HUM. RTS., *supra* note 78, at 13.

¹⁵⁰ *The Disappeared of Indian-Administered Kashmir*, AL JAZEERA (Aug. 30, 2019), <https://www.aljazeera.com/videos/2019/8/30/the-disappeared-of-indian-administered-kashmir> [https://perma.cc/36Z6-3YD7].

¹⁵¹ See sources cited *supra* note 78.

¹⁵² The Armed Forces (Special Powers) Act, 1958.

Governor's Rule.¹⁵³ Similar legal regimes have been enacted in "disturbed areas" across India.¹⁵⁴ Although the definition of what constitutes "disturbed" is vague, the determination is the central government's authority and is not subject to review.¹⁵⁵

The legislation emerged in Kashmir following a declaration that the Kashmir Valley had become "disturbed" in 1990, and has applied ever since.¹⁵⁶ AFSPA vests officers with sweeping authority: they can use deadly force in instances where they are not at imminent risk.¹⁵⁷ AFSPA grants armed forces the broad power to destroy property from which "armed attacks" are "likely" or "attempted" to be made;¹⁵⁸ arrest without warrant;¹⁵⁹ enter and search without warrant;¹⁶⁰ and stop, search, and seize vehicles.¹⁶¹ In short, actions that would otherwise be an abuse both of Indian criminal and human rights law are now simply a "use" of AFSPA.¹⁶² Through AFSPA, the Indian state is not only empowered to exert "free and ruthless force"¹⁶³ against Kashmiri bodies but also is invited to do so *within* the law.

Notably, AFSPA includes an explicit immunity clause: "No prosecution, suit or other legal proceeding shall be instituted, except with previous sanction of the Central Government" against officials acting under AFSPA.¹⁶⁴ The realities of the immunity clause have been devastating. In the last twenty-eight years, neither the Home Secretary nor the Defense Secretary has approved a single prosecution under AFSPA.¹⁶⁵ Moreover, there is concern that AFSPA's immunity has bled into proceedings against police officials, making them nearly impossible to

¹⁵³ HUM. RTS. WATCH, "EVERYONE LIVES IN FEAR": PATTERNS OF IMPUNITY IN JAMMU AND KASHMIR 29 (2006), <https://www.hrw.org/reports/2006/india0906/india0906web.pdf> [<https://perma.cc/5QVZ-4RVS>].

¹⁵⁴ The Armed Forces (Special Powers) Act pmb. l.

¹⁵⁵ HUM. RTS. WATCH, *supra* note 153, at 31.

¹⁵⁶ Naseer Ganai, *25 Years On, AFSPA Remains a Dirty Word in Jammu and Kashmir*, INDIA TODAY (July 9, 2015, 11:14 AM), <https://www.indiatoday.in/india/story/afspa-disagreement-jammu-and-kashmir-armed-militancy-cmp-bjp-pdp-281441-2015-07-09> [<https://perma.cc/XEM9-E5T3>].

¹⁵⁷ For example, officers can use lethal force against persons partaking in an unlawful assembly. The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, § 4a.

¹⁵⁸ *Id.* § 4b.

¹⁵⁹ *Id.* § 4c.

¹⁶⁰ *Id.* § 4d.

¹⁶¹ *Id.* § 4e.

¹⁶² See Haley Duschinski, *Destiny Effects: Militarization, State Power, and Punitive Containment in Kashmir Valley*, 82 ANTHROPOLOGICAL Q. 691, 702 (2009).

¹⁶³ See Lloyd & Wolfe, *supra* note 15, at 114.

¹⁶⁴ Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, § 7.

¹⁶⁵ See ASS'N OF PARENTS OF DISAPPEARED PERSONS & JAMMU KASHMIR COAL. CIV. SOC'Y, TORTURE: INDIAN STATE'S INSTRUMENT OF CONTROL IN INDIAN ADMINISTERED JAMMU AND KASHMIR 100 (2019), <https://jkccs.net/wp-content/uploads/2019/05/TORTURE-Indian-State%E2%80%99s-Instrument-of-Control-in-Indian-administered-Jammu-and-Kashmir.pdf> [<https://perma.cc/UG85-BVKT>].

launch.¹⁶⁶ Although activists throughout India have challenged the AFSPA's constitutionality, the Court has held that the army's powers are not "unreasonable" or "arbitrary."¹⁶⁷

If the impunity regime created by AFSPA does not reveal India's attempts to silence the indigenous, the AFSPA's origins perhaps do. AFSPA took its inspiration from a British colonial ordinance — the Armed Forces (Special Powers) Ordinance of 1942 — utilized to suppress the "Quit India Movement" in India's battle for independence.¹⁶⁸ The rationales for the modern-day AFSPA are not far from the colonial ones: upholding the "sovereignty and territorial integrity of India" and combating "terrorist acts."¹⁶⁹ This kind of parallel is not unique to the Kashmir case — "colonial and settler colonial forms[] often coexist and mutually support each other."¹⁷⁰

B. Detention

In addition to the problems created by impunity, an arbitrary detention regime has also erased Kashmiri voices from civil society. Described with other Indian detention laws as "lawless" by the Supreme Court,¹⁷¹ the Public Safety Act (PSA) enables a preventative detention regime that operates largely outside the typical criminal justice system.

The state government introduced the PSA in 1978, "ostensibly to crack down on timber smugglers" in the region.¹⁷² Since then, the PSA has been applied to a variety of perceived "dangers,"¹⁷³ including the entrance of unauthorized persons into prohibited places,¹⁷⁴ the circulation of documents "likely to affect public order,"¹⁷⁵ and, of course, individuals who "act in any manner prejudicial to the maintenance of public order."¹⁷⁶ The PSA permits the detention of individuals for one year if

¹⁶⁶ See *id.*

¹⁶⁷ *Naga People's Movement of Hum. Rts. v. Union of India*, AIR 1998 SC 431, ¶ 48 (1997).

¹⁶⁸ AMNESTY INT'L, INDIA: BRIEFING ON THE ARMED FORCES (SPECIAL POWERS) ACT, 1958, at 3 (2005), <https://www.amnesty.org/download/Documents/84000/asa200252005en.pdf> [<https://perma.cc/L78G-BAF6>].

¹⁶⁹ The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, § 3.

¹⁷⁰ VERACINI, *supra* note 87, at 29.

¹⁷¹ *Jaya Mala v. Home Sec'y, Gov't of Jammu & Kashmir*, AIR 1982 SC 1297, ¶ 7.

¹⁷² Ipsita Chakravarty, *Modi Wants to Give Kashmiris Same Rights as All Indians — But PSA Arrests Show that Hasn't Happened*, SCROLL.IN (Feb. 8, 2020, 6:30 AM), <https://scroll.in/article/952478/detentions-under-psa-show-kashmir-remains-in-state-of-exception-despite-modi-governments-claims> [<https://perma.cc/BD7K-LNL8>].

¹⁷³ Shrimoyee Nandini Ghosh, *Public Safety Act: The Making and Unmaking of the Dangerous Individual in Kashmir*, CAFÉ DISSENSUS (Feb. 20, 2017), <https://cafedissensus.com/2017/02/20/public-safety-act-the-making-and-unmaking-of-the-dangerous-individual-in-kashmir> [<https://perma.cc/GBJ3-GKJB>].

¹⁷⁴ Jammu and Kashmir Public Safety Act, 1978, §§ 3, 4.

¹⁷⁵ *Id.* § 6.

¹⁷⁶ *Id.* § 8(3)(b).

they've acted "prejudicial[ly] to the maintenance of public order,"¹⁷⁷ and for up to two years if they've acted "prejudicial[ly] to the security of the State."¹⁷⁸ The detaining official must only be "satisfied" that the facts presented meet this threshold, and no criminal charge or suspicion of criminal activity is required.¹⁷⁹

The PSA does not include the traditional protections bestowed by the criminal justice system. For example, detaining authorities can delay communicating the grounds of detention for up to ten days, and even then, authorities have broad discretion regarding which facts they must disclose.¹⁸⁰ Detainees are also entirely without access to judicial authority, facing bars on accessing legal representation, judicial review of the grounds of detention, and judicial appeal.¹⁸¹

The only legal remedy for arbitrary detention under the PSA is to petition the high court of the state or the Supreme Court through habeas corpus.¹⁸² Unfortunately, habeas corpus in Kashmir is obsolete,¹⁸³ resulting in the figurative and literal disappearing of Indigenous Kashmiri bodies. At the height of India's counterinsurgency operation in the 1990s, the concerned relatives of disappeared persons filed thousands of habeas petitions.¹⁸⁴ The majority went unheard due to "pervasive patterns of delays, non-compliance with judicial directions by executive and military authorities, and judicial normalization of impunity."¹⁸⁵ Habeas has been no more promising in recent years. One year after the abrogation, over 400 people — including former heads of state, pro-freedom leaders, and lawyers — were detained via the PSA.¹⁸⁶

As with AFSPA, the PSA's rationale illuminates a settler desire for erasure. Formally, the PSA takes a "holistic approach" to "overcome the menace of terrorism and secessionism" that "challenge[s] the integrity and

¹⁷⁷ *Id.* § 18(1)(a).

¹⁷⁸ *Id.* § 18(1)(b).

¹⁷⁹ *See id.* § 8(1)(a).

¹⁸⁰ *See id.* § 13(1)–(2).

¹⁸¹ *See id.* §§ 14–16 (referring all issues to an Advisory Board).

¹⁸² *See* India Const. art. 32; *id.* art. 226; Jammu and Kashmir Const. art. 103; *see also* AMNESTY INT'L, *supra* note 70, at 64 (finding that the Jammu and Kashmir High Court focused "on the procedural and nominal aspects of detention at the expense of substantive protection of human rights of the detainees").

¹⁸³ *See* AMNESTY INT'L, *supra* note 70, at 63–64.

¹⁸⁴ *See* Shrimoyee Nandini Ghosh, Reflections, *Crisis Constitutionalism, Permanent Emergency and the Amnesias of International Law in Jammu and Kashmir*, TWAILR (May 28, 2020), <https://twailr.com/crisis-constitutionalism-permanent-emergency-and-the-amnesias-of-international-law-in-jammu-and-kashmir> [<https://perma.cc/WY6T-VMYT>].

¹⁸⁵ *See id.* The lack of justice was so devastating that it resulted in the formation of the Association of Parents of Disappeared Persons. *See generally* ASS'N OF PARENTS OF DISAPPEARED PERSONS, KASHMIR, A PROVISIONAL BIOGRAPHY OF A JOURNEY TOWARDS JUSTICE FOR THE ENFORCED DISAPPEARED, https://apdpkashmir.com/ebmedia/sitename_eb/wp-content/uploads/2020/02/APDP-biography-02-02-2020.pdf [<https://perma.cc/SLX9-A5W6>].

¹⁸⁶ *See* Fareed, *supra* note 113.

sovereignty of the state.”¹⁸⁷ Informally, as described by a former state politician, the aim is to keep recalcitrant Kashmiris “out of circulation.”¹⁸⁸

The PSA has not only depicted the Kashmiri as dangerous but also, in collaboration with AFSPA, established a legal “death zone[]”¹⁸⁹ critical to the operation of the settler regime. It is in this zone — where impunity and detention run rampant — that Kashmiris are caged “as existential and demographic threats.”¹⁹⁰ The veneer of terrorism-based justifications does little to change this reality. The intense militarization of indigenous soil and the “spatially differentiated policing of populations” suggest that “the ‘terrorist’ stands in for the ‘Native.’”¹⁹¹

C. Displacement

While the laws discussed above are animated by the settler colonial logic, Article 35A’s abrogation makes the recruitment of a settler community on indigenous land a reality.¹⁹² The abrogation secures “settler colonialism’s specific, irreducible element”: “territoriality.”¹⁹³ Without Article 35A, India can now use the territory of Kashmir for investment, natural resources, and a new community of residents.

While India continued its clampdown in Kashmir, the downstream effects of the abrogation continued to materialize. The government earmarked land for non-Kashmiri investors¹⁹⁴ and planned an investment summit to facilitate the bidding.¹⁹⁵ The August 5 abrogation has also paved the way for exploitative resource extraction in the region. Kashmir’s special status ensured that nonlocal businesses were barred from operating in the region without a lease agreement with the government.¹⁹⁶ Starting in January following the abrogation, all mining bids

¹⁸⁷ AMNESTY INT’L, *supra* note 70, at 9 (quoting the grounds given by a magistrate for a detention under the PSA).

¹⁸⁸ *Id.* at 3.

¹⁸⁹ Lloyd & Wolfe, *supra* note 15, at 114.

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 116.

¹⁹² Following the abrogation, a senior Indian diplomat even went so far as to call for an Israel-like model of settlements for Hindus in Kashmir. See *Anger over India’s Diplomat Calling for “Israel Model” in Kashmir*, AL JAZEERA (Nov. 28, 2019), <https://www.aljazeera.com/news/2019/11/28/anger-over-indias-diplomat-calling-for-israel-model-in-kashmir> [https://perma.cc/B5Z2-FUKE].

¹⁹³ Wolfe, *supra* note 17, at 388.

¹⁹⁴ See Zulfikar Majid, *Prime Minister Narendra Modi to Attend Jammu and Kashmir Global Investors’ Summit in May*, DECCAN HERALD (Feb. 23, 2020, 11:02 AM), <https://www.deccanherald.com/business/business-news/prime-minister-narendra-modi-to-attend-jammu-and-kashmir-global-investors-summit-in-may-807308.html> [https://perma.cc/J8AJ-JVY8].

¹⁹⁵ See Pre-summit Investors’ Meet & Curtain Raiser, JK GLOB. INVS.’ SUMMIT, <https://jkinvestorsummit.com/curtain-raiser> [https://perma.cc/F7RR-KXHN].

¹⁹⁶ See Athar Parvaiz, *In a First, Outside Companies Earn 100 Percent Mining Rights in Kashmir*, KASHMIR OBSERVER (Feb. 10, 2020), <https://kashmirobservers.net/2020/02/10/in-a-first-outside-companies-earn-100-percent-mining-rights-in-kashmir> [https://perma.cc/FCA2-G76Z].

were solicited online at a time when internet connectivity was still restricted in Kashmir.¹⁹⁷ The result was a “death blow to [Kashmiri] business”¹⁹⁸: for the first time, almost seventy percent of mineral extraction contracts in Kashmir were procured by non-Kashmiris.¹⁹⁹

The Indian government also introduced a new domicile order²⁰⁰ that expands the definition for residency and allows a new class of non-Kashmiris to move into the region. This legal maneuver mirrored the use of “registration by title” to facilitate the expropriation of indigenous lands in Palestine and Australia.²⁰¹ The order now permits Indian citizens who have lived in the region for a set period of time to claim a “domicile certificate.”²⁰² The children of those domiciled can also claim their own certificates, even without ever having entered the region.²⁰³ These provisions extend to armed forces stationed in Kashmir and their children as well,²⁰⁴ making the hundreds of thousands of armed forces in Kashmir a potentially new class of settlers themselves. By claiming domicile, these non-Kashmiris can now apply for all local government jobs, including those in police or administration, that were previously reserved for Kashmiris.

However, a new land order may have already superseded the domicile laws in importance, having repealed twelve former state land laws and amended fourteen others.²⁰⁵ The order erased Article 35A’s vestiges, largely removing the “permanent residency” clause across Kashmir’s land regime.²⁰⁶ Notably, it did not limit land transactions to newly defined

¹⁹⁷ See Azaan Javaid, *Outside Firms Enter Mining Race in J&K, Lease Earnings Touch Crores from Lakhs*, THE PRINT (Feb. 6, 2020, 11:35 AM), <https://theprint.in/india/outside-firms-enter-mining-race-in-jk-lease-earnings-touch-crores-from-lakhs/360175> [<https://perma.cc/P6XN-T6TF>].

¹⁹⁸ *Id.*

¹⁹⁹ See Nusrat Sidiq, *Kashmir’s Mineral Contracts Largely Handed to Non-locals*, ANADOLU AGENCY (July 27, 2020), <https://www.aa.com.tr/en/asia-pacific/kashmir-s-mineral-contracts-largely-handed-to-non-locals/1923634> [<https://perma.cc/PD4M-R5MM>].

²⁰⁰ See Ministry of Home Affairs, Jammu and Kashmir Reorganisation (Adaptation of State Laws) Order, 2020, S.O. 1229(E), § 14 (Notified on March 31, 2020).

²⁰¹ See Lloyd & Wolfe, *supra* note 15, at 115 (discussing use of “registration by title” as a tool to “strengthen and regularize settler dispossession of Indigenous populations”).

²⁰² Jammu and Kashmir Reorganisation (Adaption of State Laws) Order, 2020, § 14.

²⁰³ *Id.*

²⁰⁴ *Id.*; see also Mirza Saaib Bég, Opinion, *J&K’s New Domicile Order: Disenfranchising Kashmiris, One Step at a Time*, THE WIRE (May 30, 2020), <https://thewire.in/rights/kashmir-domicile-law> [<https://perma.cc/ZR7E-JJX9>].

²⁰⁵ See Ministry of Home Affairs, Union Territory of Jammu and Kashmir Reorganisation (Adaptation of State Laws) Fifth Order, 2020, S.O. 3808(E) (Notified on Oct. 26, 2020) [hereinafter Reorganisation Fifth Order]; Safwat Zargar, *Explainer: What Exactly Are the Changes to Land Laws in Jammu and Kashmir?*, SCROLL.IN (Oct. 29, 2020, 6:30 AM), <https://scroll.in/article/977057/explainer-what-exactly-are-the-changes-to-land-laws-in-jammu-and-kashmir> [<https://perma.cc/SWT2-KT8B>].

²⁰⁶ In particular, the Order removed the “permanent resident” protections from the Jammu and Kashmir Agrarian Reforms Act, Jammu and Kashmir Development Act, and the Jammu and

domiciliaries. The law also empowers non-Kashmiris to repurpose agricultural land, which constitutes ninety percent of the region, for nonagricultural purposes.²⁰⁷ Similarly concerning is the government's ability to designate "strategic area[s]" for military use without the previously required consultation with local government.²⁰⁸ While the full effects of these reforms are unknown, one thing is clear: "J&K is now up for sale" ²⁰⁹

Although the government has justified its actions in the name of development,²¹⁰ such pretexts have been laid bare in the American regime: "There was never a time when the white man said he was trying to help the Indian get into the mainstream of American life that he did not also demand that the Indian give up land" ²¹¹

CONCLUSION

Mahjoora des sonuy,	Mahjoor, our motherland,
baagah chhu nundabonuy,	Is the loveliest on earth!
ath lol gatghi baronuy,	Shall we not love her best?
gulshan vatan chhu sonuy...	A garden is our land!

— Ghulam Ahmad Mahjoor²¹²

This Kashmiri freedom verse, first written in the 1980s, perhaps best evinces the threat that the abrogation poses: the loss of Kashmiris' motherland. By giving an expanded class of non-Kashmiris access to new forms of livelihood and land, India has made the settlement of a new class of residents viable and attractive. The abrogation of Article 35A and the laws that have followed it are quintessential settler colonial violence, but so too are the legal regimes that came before the abrogation. Fueled by a growing settler narrative around Kashmir, India has long utilized the law to not just colonially oppress Kashmiris but erase them altogether.

Kashmir Land Grants Act, all of which regulated the lease and transfer of land. See Reorganisation Fifth Order, *supra* note 205.

²⁰⁷ See *id.* § 3 (repealing statutory protections for agricultural land).

²⁰⁸ *Id.* § 7.

²⁰⁹ Omar Abdullah (@OmarAbdullah), TWITTER (Oct. 27, 2020, 4:06 AM), <https://twitter.com/OmarAbdullah/status/1321015482544054273> [<https://perma.cc/TSN7-994N>].

²¹⁰ See *India Revokes Kashmir's Special Status*, *supra* note 2.

²¹¹ Lana Tatour, *Citizenship as Domination: Settler Colonialism and the Making of Palestinian Citizenship in Israel*, ARAB STUD. J., Fall 2019, at 13 (quoting VINE DELORIA, JR., FOR YOUR SINS: AN AMERICAN MANIFESTO 173 (1969)).

²¹² GHULAM AHMAD MAHJOOR, *A Garden Is Our Land (Gulshan Vatan Chhu Sonuy)*, reprinted in THE BEST OF MAHJOOR 101, 103 (Triloki Nath Raina trans., 1989).

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